

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

DWAIN LONEY, II

v.

JOHNSON, MIRMIRAN AND
THOMPSON, ET AL.

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* Civil No. JFM-04-2768
* ECF Exempt
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MEMORANDUM

Plaintiff has instituted this *pro se* action against his former employer alleging that he was discriminated against because of his race (African American) and his opposition to sexual harassment he suffered as a heterosexual male. Defendant has filed a motion for summary judgment. Plaintiff's has responded to the motion. The motion will be granted.

As to plaintiff's race discrimination claim, plaintiff has not established three elements of his *prima facie* case: that he was replaced by someone who was not African American, that he has performed his job competently, or that a person with a similar performance record had received more favorable treatment. *See generally Brinkley v. Harbour Recreation Club*, 180 F.3d 598, 607 (4th Cir. 1999); *Bryant v. Bell Atlantic Maryland, Inc.*, 288 F.3d 124, 133-34 (4th Cir. 2002).¹ As to plaintiff's sexual harassment/retaliation claim, he had presented no facts to

¹Plaintiff seeks under Fed. R. Civ. P. 56(f) a continuance until requests for production of documents and interrogatories he has propounded are answered. Defendant contends that it need not respond to those discovery requests because the response time fell after the discovery deadline set in this court's scheduling order. Defendant's contention in this respect is incorrect. It should have responded to those requests and interrogatories, asserting only those objections it could make in good faith. However, plaintiff has attached the document requests and interrogatories to his opposition to the summary judgment motion. It is clear that many of them are objectionable on their face and that, in any event, the responses to them would not establish facts sufficient to withstand the granting of summary judgment against plaintiff.

demonstrate that he was sexually harassed or that his employment was terminated because he had complained that some of his coworkers were homosexual. In fact, the record reveals that after receiving a poor performance appraisal, plaintiff (for the first time) began to complain about coworkers; that in response to the complaints, defendant (even though not asked to do so by plaintiff) conducted a full and thorough investigation; that during the course of the investigation plaintiff both changed and embellished his allegations; and that no facts were discovered during the course of the investigation to sustain plaintiff's charges.

A separate order granting defendant's motion is being entered herewith.

Date: July 19, 2005

/s/ _____
J. Frederick Motz
United States District Judge

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ECF Exempt

ORDER

For the reasons stated in the accompanying memorandum, it is, this 19th of July 2005

ORDERED

1. Defendant's motion for summary judgment is granted; and
2. Judgment is entered in favor of defendant against plaintiff.

/s/

J. Frederick Motz

United States District Judge